

Remarks/Arguments

Claims 1-46 are pending in the application. Claims 1-46 are rejected.

Claims 1 and 15 are amended to delete limitations that are not necessary to patentably distinguish over the prior art.

***Rejection of Claims 1-46 Under 35 USC §102(e) Based on Herz***

Claims 1-46 stand rejected under 35 USC §102(e) based on USP 6,460,036 to Herz. New claims 47-60 are added by this amendment Reconsideration of the rejections is respectfully requested in view of the following remarks.

In certain broad aspects the present invention is directed to a system and method for managing an experiment for determining user reactions to different sets of content elements. Each separate set combination and/or formatting of content constitutes a "treatment". (Spec. page 9, lines 1-2.) Various treatments are presented to users to correlate content elements with user behavior. In another broad aspect of the present invention, observations of user behavior are collected and used to modify or customize content for presentation to users. In other words, the present invention may be used to determine what set of content is most suitable for achieving a desired outcome.

To illustrate the present invention, consider a simple web page composed of textual and graphical sections or elements. The text may have a set of formatting attributes, such as font, size, spacing, etc. The graphical elements may have a set of attributes, including color, shading, bordering, size etc. The present invention manages an experiment where, for example, textual and graphical elements are rearranged on the webpage and/or textual and graphical attributes are varied. Each permutation is a treatment. It might be determined that for an online merchant higher sales are generated by placing special offers at the top of the page

instead of at the bottom of the page. Demographic associations may also be discerned: for example, persons 18-30 might be more inclined to make a purchase if special offers are located at the top of the page and persons 31-40 might be more inclined to make a purchase if the special offers are located at the bottom of the page.

In contrast to the present invention, Herz does not disclose or teach an experimentation system for actively managing (e.g. creating or executing) the presentation of various treatments to users to asses user behavior, reactions or choices in response to treatments that are managed through the experimentation system. Herz relates to a system of monitoring what a user accesses but plays no role in managing or presenting various treatments of content to users in an experiment. Accordingly, Herz lacks an experiment engine as claimed and therefore does not anticipate any claim of the present invention. The rejections should therefore be withdrawn for this reason alone.

More specifically, the Examiner considers the claimed experiment to correspond to the methodology or procedure described in Herz at Col. 6, lines 3-20 and col 17, lines 43 to col. 18, line 27. These sections merely discuss monitoring user behavior and matching users and target objects. Nowhere is there any discussion of what target objects are to be created, executed or presented to users so that user behavior may be evaluated. Accordingly, Herz does teach or suggest "an experiment engine operable to define an experiment relating to various treatments for a set of content elements, the experiment engine operable to conduct an experiment comprising presenting the various treatments to users over a data network..." as claimed in claim 1. Independent claims 1, 15, 24, 36, 40 and 43 contain similar limitations and therefore also patentably distinguish over Herz. Dependent claims 2-14, 16-23, 25-35, 37-39, 42 and 44-46 relate back to the foregoing independent claims and are also patentably distinct for the same reason as are the independent claims.

New claims 47-82 are added by this amendment and are patentably distinct over the cited art for reasons analogous to those given for the claims discussed above.

Support in the specification for the amendments and new claims is found throughout the specification. For example, support for claims 1-9 and 11-13 can be found in Figure 2, page 13, lines 29-32, and page 16, lines 4-33; support for claim 47 can be found on page 9, lines 1-4. Support for claim 48 can be found on page 11, lines 24-33; support for claim 49 can be found on page 3, line 25 to page 4, line 3; support for claim 50 can be found on page 35, line 1 to page 37, line 27; support for claims 51, 52, 54, 55, and 58 can be found on page 13 to page 29, line 15; support for claims 53, 56, and 59-62 can be found on page 28, lines 28-33, and page 29, line 29 to page 30, line 8; support for claim 57 can be found on page 5 to page 7, line 9; and page 13 to page 29, line 15; support for claim 63 can be found on page 51, line 31 to page 52, line 5; support for claim 64 can be found on page 17, line 32 to page 19, line 31; support for claims 80- 81 can be found on pages 5-9; support for claim 82 can be found on pages 16-20; support for claims 65-67 can be found on pages 19-23; support for claims 68, 69, 73, 74, 75, and 78 can be found on pages 33-37; support for claims 70-71 can be found on page 14; and support for claims 72, 76, 77, and 79 can be found on pages 40-47.

In view of the foregoing reasons for distinguishing over the cited references, Applicant has not raised other possible grounds for traversing the rejections, and therefore nothing herein should be deemed as acquiescence in any rejection or waiver of arguments not expressed herein.

#### CONCLUSION

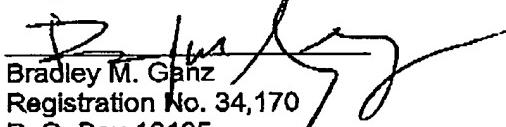
Applicant submits that in view of the foregoing arguments and/or amendments, the application is in condition for allowance, and favorable action is respectfully requested. The

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Commissioner is hereby authorized to charge any fees, including extension fees, which may be required, or credit any overpayments, to Deposit Account No. 50-1001.

Respectfully submitted,

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